

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-1514

CHINESE VOICE OF GOLDEN CITY,

APPELLANT,

v.

FEDERAL COMMUNICATIONS COMMISSION,

APPELLEE,

SILVER STATE BROADCASTING, LLC,

INTERVENOR.

ON APPEAL OF AN ORDER OF THE
FEDERAL COMMUNICATIONS COMMISSION

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

1. Parties.

The appellant is Chinese Voice of Golden City.¹ The appellee is the Federal Communications Commission. The intervenor is Silver State Broadcasting, LLC.

2. Rulings under review.

Chinese Voice of Golden City DKQLS-LP, Las Vegas, Nevada,
Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020) (J.A. 203).

3. Related cases.

The order on review has not previously been before this Court. Counsel is not aware of any related cases that are pending before this Court or any other court.

¹ Chinese Voice initiated this proceeding by filing a document titled “Petition for Review.” That document is properly deemed a “Notice of Appeal” because, by its terms, it seeks review “[p]ursuant to 47 U.S.C. § 402(b).” Petition for Review at 1. Section 402(b) provides that “[a]ppeals” may be taken to this Court from Commission orders in specified licensing cases. 47 U.S.C. § 402(b).

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GLOSSARY

Act or Communications Act	Communications Act of 1934, as amended, 47 U.S.C. 151 <i>et seq.</i>
Commission or FCC	Appellee Federal Communications Commission
Chinese Voice	Appellant Chinese Voice of Golden City
FM	Frequency Modulation
<i>Letter Decision</i>	November 19, 2019 Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau to Chinese Voice of Golden City (J.A. 28)
<i>Order on Appeal</i>	<i>Chinese Voice of Golden City DKQLS-LP, Las Vegas, Nevada</i> , Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020) (J.A. 203)
<i>Reconsideration Decision</i>	<i>Chinese Voice of Golden City</i> , Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020) (J.A. 59)
Tian Statement	August 8, 2019 Statement of Bo Tian, President, Chinese Voice of Golden City

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BRIEF FOR APPELLEE

INTRODUCTION

Chinese Voice of Golden City (“Chinese Voice”), the former licensee of low power FM radio station KQLS-LP, Las Vegas, Nevada, challenges an order of the Federal Communications Commission (“Commission” or “FCC”) holding that the station’s license expired as a matter of law under Section 312(g) of the Communications Act, 47 U.S.C. § 312(g). *Chinese Voice of Golden City DKQLS-LP, Las Vegas, Nevada*, Memorandum Opinion and Order, 35 FCC Rcd 13638 (2020) (“*Order on Appeal*”) (J.A. 203). Section 312(g) provides that a broadcast

station license expires if the station “fails to transmit broadcast signals for any consecutive 12-month period,” except that the Commission may “extend or reinstate such station license” if the licensee prevails in an administrative or judicial appeal, the applicable law changes, “or for any other reason to promote equity and fairness.” 47 U.S.C. § 312(g). Longstanding Commission precedent, affirmed by this Court in *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009), makes clear that broadcasting from an unauthorized and unlicensed location does not count as broadcasting for purposes of Section 312(g). Instead, under the statute, such transmissions “are no better than silence.” 563 F.3d at 553.

Chinese Voice does not dispute that, from the time of the station’s construction, it never transmitted broadcast signals from its licensed site and that, for fifteen consecutive months, the station transmitted broadcast signals from an unlicensed location that is 2.27 miles away from its licensed site. The Commission therefore correctly determined that the station’s license expired as a matter of law pursuant to Section 312(g). Because Chinese Voice proffered no compelling reason for its failure to broadcast from its licensed location or demonstrated that the station’s failure to do so was beyond Chinese Voice’s control, the Commission reasonably declined to reinstate the expired license. And in light of questions that had been raised about whether Chinese Voice had engaged in misrepresentation or

lack of candor, the agency reasonably decided to require that Chinese Voice and its principals attach a copy of its decision (and the Bureau decision that the Commission upheld) to any license application that might be filed in the next five years, so that any such application would not be routinely processed.

The *Order on Appeal* should be affirmed.

QUESTION PRESENTED

1. Whether the Commission properly determined that Chinese Voice's broadcast license expired as a matter of law because KQLS-LP failed to transmit broadcast signals at the station's licensed site for more than twelve consecutive months.

2. Whether the Commission reasonably concluded that considerations of equity and fairness did not require it to reinstate the KQLS-LP license where Chinese Voice offered no compelling reasons for the unauthorized transmission of broadcast signals nor demonstrated that the failure to transmit broadcast signals at the licensed site was beyond its control.

3. Whether, in light of questions whether Chinese Voice had engaged in misrepresentation or lack of candor, the Commission reasonably required Chinese Voice and its principals to attach a copy of its decision (and that of the Bureau which it affirmed) to any broadcast license applications for the next five years.

JURISDICTION

The *Order on Appeal* was released on November 25, 2020. The notice of appeal (mistitled as a petition for review) was timely filed on December 23, 2020, which was within the 30-day period set forth in 47 U.S.C. § 402(c). The Court has jurisdiction under 47 U.S.C. § 402(b)(5), which provides that appeals may be taken to this Court from Commission decisions and orders “[b]y the holder of any construction permit or station license which has been modified or revoked by the Commission.”

STATUTES AND REGULATIONS

47 U.S.C. § 312(g) provides, in pertinent part:

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of the broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.

Other relevant statutes and regulations are reprinted in the statutory appendix to this brief.

COUNTERSTATEMENT

I. STATUTORY AND REGULATORY BACKGROUND

A. Broadcast Licensing

Section 301 of the Communications Act provides that “[n]o person shall” transmit broadcast signals “except under and in accordance with this [Act] and with a license in that behalf granted under the provisions of this [Act].” 47 U.S.C. § 301. The Communications Act defines “broadcasting” as the “dissemination of radio communication intended to be received by the public.” 47 U.S.C. § 153(7).

The Commission’s rules establish minimum distance separation requirements for low power FM stations to ensure that such stations do not cause interference to other authorized broadcast stations. *See, e.g.*, 47 C.F.R. § 73.807(a)(1) (setting forth separation requirements applicable to low power FM broadcast stations). The Commission’s rules also require low power FM broadcast stations to operate pursuant to minimum operating schedules. 47 C.F.R. § 73.850. For instance, except for stations licensed to educational institutions, “[low power] FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week.” *Id.* § 73.850(b).

In addition, the Commission’s rules prohibit a low power FM station from making “[a]ny change in station geographic coordinates, including coordinate corrections” without first obtaining a grant of a construction permit from the Commission. 47 C.F.R. § 73.875(b)(2). Those rules also prohibit a low power FM

station from operating “at times, or with modes or power, other than those specified and made a part of the license.” *Id.* § 73.1745(a); *see id.* § 73.801. The Commission’s rules further provide that “[n]o application for [a low power]FM station may be granted unless the applicant certifies, . . . that neither the applicant, nor any party to the application, has engaged in any manner . . . in the unlicensed operation of any station in violation of Section 301 of the Communications Act.” 47 C.F.R. § 73.854.

B. Section 312(g) of the Communications Act

Section 312(g) of the Communications Act prohibits a broadcast station from failing to provide the service to the public for which it has received a Commission license. Thus, “[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.” 47 U.S.C. § 312(g). The Commission’s rules implementing Section 312(g) likewise make clear that the “license of [a low power]FM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition

of the license to the contrary.” 47 C.F.R. § 73.873(b).¹ Under well-settled circuit precedent, for purposes of Section 312(g), “unauthorized and unlicensed transmissions are no better than silence.” *Eagle*, 563 F.3d at 553.

Section 312(g) grants the Commission the discretion to “extend or reinstate” the expired broadcast license “if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.” 47 U.S.C. § 312(g).

II. FACTUAL BACKGROUND

A. The Construction Permit and Station License Grants.

On November 20, 2014, the FCC issued a construction permit to Chinese Voice to build a low power FM radio station in Las Vegas, Nevada. (J.A. 2). The permit authorized Chinese Voice to construct the station at geographic coordinates “North Latitude: 36 deg 11 min 24 sec” and “West Longitude: 115 deg 08 min 35 sec” (the “Permit Site”). (J.A. 3).

On November 19, 2017, Chinese Voice filed an application for a license to operate the constructed station in which it certified that KQLS-LP “was constructed as authorized in the underlying construction permit” and “was constructed in compliance with all special operating conditions, terms, and

¹ See also 47 C.F.R. §§ 73.801 & 73.1750 (“The license of any station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.”).

obligations described in the construction permit.” (J.A. 6). On December 12, 2017, the FCC issued the station license, which authorized Chinese Voice “to use and operate the radio transmitting apparatus herein described”—including at “Antenna Coordinates . . . 36 deg 11 min 24 sec [North] . . . 115 deg 08 min 35 sec [West].” (J.A. 8-9). The license also specified that “[t]his license is issued on the licensee’s representation that the statements contained in the licensee’s application are true” and that “[t]his license shall not vest in the licensee any right to operate the station . . . in any other manner than authorized herein.” (J.A. 8).

B. The License Modification Application To “Correct” The Station’s Geographic Coordinates.

Nearly a year and a half later, on August 9, 2019, Chinese Voice filed an application to modify the KQLS-LP license, stating that it had “recently determined that the coordinates included in its license application were in error by 256 feet.” (capitalization omitted) (J.A. 21). Chinese Voice added that the “correct coordinates” for its site (which it later identified as 120 West Owens Avenue) were “36-11-21.6 N, 115-08-36.1 W” and that “[n]o other corrections are being made to the engineering data provided in the licensee’s technical information.”

(capitalization omitted) (J.A. 21). On August 16, 2019, the FCC granted the license modification application but rescinded the grant on August 20, 2019. *See* J.A. 22.²

C. The Notice of License Expiration.

On November 19, 2019, based on Chinese Voice’s admission in its license modification application that KQLS-LP had not been transmitting broadcast signals from its licensed site, the Audio Division (“Division”) of the FCC’s Media Bureau (“Bureau”) issued a letter notifying Chinese Voice that “the Station’s license has expired pursuant to [section 312(g)] of the Act” and that “the facts of this case do not support reinstatement of the license to promote fairness and equity.” November 19, 2019 Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau to Chinese Voice of Golden City (“*Letter Decision*”) at 1, 2 (J.A. 28, 29).

The letter explained that “licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.” *Id.* at 1-2 & n.6 (citing, inter alia, “*Eagle Broad. Group, Ltd. [v. FCC]*, 563 F.3d 543, 553 (D.C. Cir. 2009) (‘Under the statute, unauthorized and unlicensed transmissions are no

² In an October 22, 2019 letter, Chinese Voice requested special temporary authority from the Commission “to continue to operate at its current site while the Commission reviews its application to correct the coordinates of its license to operate at that site” and reiterated that “it is operating at the antenna site identified in the Application, its operation at that site [is] 256 feet from its licensed site . . . and, operation at that site is in full compliance with the Commission’s rules.” (J.A. 22, 23).

better than silence’))” (J.A. 28-29). Thus, the letter explained, “a station is subject to section 312(g)’s license expiration provision if: (a) the station fails to operate for twelve consecutive months or longer; (b) the station operates with unauthorized facilities for such a period; or (c) a combination of the prior two situations occurs for such period.” *Id.* at 2 (J.A. 29). The letter also explained that the “Commission conducts a case-by-case factual analysis to determine whether reinstatement [of the expired license] would ‘promote equity and fairness,’” and stated that the “Commission has exercised this statutory discretion only when the failure to timely resume broadcasts was for a compelling reason beyond the licensee’s control.” *Id.* at n.5 (J.A. 28-29). The Division therefore informed Chinese Voice that “the broadcast license for the Station expired as a matter of law, at 12:01 a.m. on December 13, 2018.” *Id.* at 2 (J.A. 29). The station’s call sign was accordingly deleted, and the license modification application and the request for special temporary authority (*see supra* n.2) were dismissed. *Ibid.* (J.A. 29).

D. The Tian Statement

In fact, as it turned out, for fifteen months, KQLS-LP had been transmitting from a site that was not simply 256 feet away from its authorized site, but more than two-and-a-quarter *miles* away. In an August 8, 2019 statement that Bo Tian, Chinese Voice’s president, submitted to the FCC’s Enforcement Bureau (a separate component of the agency that was conducting an independent investigation of the

station), it was disclosed that “on or about January 20, 2018”—that is, about a month after the grant of the station license—Chinese Voice “installed transmission facilities including an antenna on the rooftop of [its] office-studio at 1707 East Charleston Blvd, Las Vegas . . . which is 2.27 miles from [Chinese Voice’s original site at 120 West Owens Avenue] but closer to Chinatown,” KQLS-LP’s “targeted community.” Tian Statement at ¶8 (J.A. 11). According to Mr. Tian, KQLS-LP transmitted broadcast signals at this location from approximately January 20, 2018 until May 2, 2019. *Id.* ¶¶ 8, 10 (J.A. 11). After that time period, Mr. Tian reported that KQLS-LP resumed transmissions at 120 West Owens Avenue, first through the use of a “mobile production van,” and then by means of a “broadcast tower with an attached antenna atop . . . a semi-permanent trailer.” *Id.* at ¶¶ 10, 11 (J.A. 11).

E. Chinese Voice’s Petition for Reconsideration.

On December 5, 2019, Chinese Voice petitioned the Bureau to reconsider the *Letter Decision* notifying it that KQLS-LP’s license had expired. (J.A. 30). Chinese Voice did not address the Division’s finding that KQLS-LP failed to transmit broadcast signals at its licensed site for a period of twelve consecutive months. Instead, Chinese Voice argued that the “*Letter Decision* should be reconsidered and reversed, and the [License] Mod[ification] Application should be granted” under section 73.1690(c)(11) of the Commission’s rules, which allow

modifications of “FM, TV and Class A TV” station licenses to correct geographical coordinates “where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude.” (citing 47 C.F.R. § 73.1690(c)(11)) (J.A. 37). Chinese Voice also argued that: the “*Letter Decision* is contrary to a long line of Commission precedent,” (J.A. 39); the “sanction imposed in the *Letter Decision*” was “arbitrary and capricious,” (J.A. 43); the implicit conclusion in the *Letter Decision* “that *no variance of any amount* is permitted . . . defies the reality . . . [a]nd it also contravenes Commission precedent,” (J.A. 44); and “the facts of this case cry out for reinstatement to promote fairness and equity” (J.A. 47).

Nowhere in its petition for reconsideration did Chinese Voice mention that it had moved its transmission antenna to a location more than two-and-a-quarter miles away from its licensed site or that KQLS-LP transmitted broadcast signals at that location for fifteen consecutive months. Instead, Chinese Voice asserted that “[t]he Station was built and is operating at the site at which it was licensed” (J.A. 38), and that by filing the license modification application, “[Chinese Voice] was not moving its Station, changing its antenna height, or changing anything about its

licensed facilities” but “was merely attempting to provide the Commission more precise information about its coordinates.” (J.A. 41).³

F. The Bureau’s Denial of Reconsideration.

On January 15, 2020, the Bureau denied reconsideration of the *Letter Decision*. *Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020) (“*Reconsideration Decision*”) (J.A. 59). In doing so, the Bureau noted that it had reviewed records from the Enforcement Bureau investigation of KQLS-LP, including the statement of Chinese Voice President Bo Tian, which disclosed that the station had never operated from its licensed site, and that “on or about January 20, 2018,” Chinese Voice had “relocated the Station without Commission approval to the rooftop of 1707 East Charleston Boulevard . . . which is 2.27 miles from [its original site].” *Reconsideration Decision* ¶7 (internal quotation marks omitted) (J.A. 61).

The *Letter Decision*, the Bureau observed, was “based on the very limited information set forth in the License Modification Application,” which had only reflected that “the Station operated without Commission approval from the West

³ Chinese Voice also sought reconsideration because the *Letter Decision* set forth the wrong license coordinates for KQLS-LP – “35-11-24 N, 115-08-35 W” – rather than “36-11-24 N, 115-08-35 W.” (J.A. 37). *See Letter Decision* at 1 (J.A. 28). In denying reconsideration, the Bureau acknowledged that the *Letter Decision* “contains a typographical error related to the coordinates specified in the Station’s license,” but found that the error “was harmless.” (J.A. 61-62).

Owens Avenue Site for more than a year.” *Id.* ¶10 (J.A. 62). The Bureau now understood, based on Mr. Tian’s statement, “that the Station never operated from the only authorized site (the Permit Site), but instead operated from two unauthorized sites (the West Owens Avenue Site and the East Charleston Boulevard Site) for more than a year in total, including more than a year at the latter site.” *Id.* ¶10 (J.A. 62). While the “change in the Bureau’s understanding of the facts,” did not “alter the conclusion in the *Letter [Decision]* that the Station’s license was forfeited pursuant to section 312(g),” the Bureau determined that its more accurate understanding of the true facts “completely undermines [Chinese Voice’s] argument that this case involves a mere coordinate correction of less than three seconds.” *Ibid.* (J.A. 62).⁴

⁴ The Commission’s rules required Chinese Voice, as the operator of a low power FM station, to apply for and be granted a construction permit to make “[a]ny change in station geographic coordinates, including coordinate corrections.” 47 C.F.R. § 73.875(b)(2); *see also Reconsideration Decision* ¶11 (“A change in coordinates [of the Permit Site] in any direction requires a new engineering analysis.”) (J.A. 62). The Bureau rejected Chinese Voice’s attempt to invoke section 73.1690(c)(11) of the Commission’s rules, which allows certain types of FM and TV stations to make minor coordinate corrections of three seconds or less (provided the change would not create a new short-spacing or exacerbate an existing short-spacing) without prior Commission approval, but instead with an after-the-fact license modification application such as the one Chinese Voice submitted. The Bureau explained that section 73.875(b)(2) governs, and that section 73.1690(c)(11) does not apply to low power FM stations. *Id.* at ¶9 (J.A. 62). This is true because 47 C.F.R. § 73.801 lists the rules “applicable to [low power FM] stations,” which “does not include section 73.1690(c)(11).” *Ibid.* (J.A. 62).

The Bureau also rejected Chinese Voice’s contention that “the Commission ‘usually issues a notice of violation or a notice of apparent liability for forfeiture when it has reason to believe that a licensee’s coordinates are not correct.’” *Id.* ¶12 (J.A. 62-63) (quoting Petition at 8-12 (J.A. 39-43)). As the Bureau explained, “[n]one of the [cases] cited by [Chinese Voice] concern operation from unauthorized facilities for more than a year, thereby leading to license expiration under section 312(g).” *Ibid.* (J.A. 63). And it “was unnecessary” to issue a notice of violation “in this case,” because Chinese Voice “admitted to operating at an unauthorized site for over a year,” and “license expiration under section 312(g) is automatic as a matter of law.” *Ibid.* (J.A. 63).

The Bureau next rejected Chinese Voice’s request for reinstatement of its license. *Id.* ¶15 (J.A. 64). The Bureau explained that the “Commission exercises its statutory discretion to extend or reinstate a license that has expired pursuant to section 312(g) only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee’s control.” *Ibid.* (internal quotation marks omitted) (J.A. 64). Here, Chinese Voice did not allege that KQLS-LP’s “construction at the wrong location was beyond its control,” but instead “erroneously claim[ed] that ‘[Chinese Voice] made no changes to its licensed facilities’ when in fact it moved its transmitter site without prior approval to be closer to Chinatown and then sought to reverse course, in the guise of a

coordinate correction, after an [Enforcement Bureau] inspection revealed the blatant rule violation.” *Ibid.* (J.A. 64). “Moreover,” the Bureau found, “it would not ‘promote equity and fairness’ to extend or reinstate the expired license here considering that the Station did not show [that] the unauthorized site changes did not cause or exacerbate any short spacing.” *Ibid.* (J.A. 64).

Finally, “based on the Tian Statement,” the Bureau “conclude[d] that [Chinese Voice] may have withheld material information in the License Modification Application and made incorrect statements to the Commission in the Petition when it repeatedly claimed that the Station’s actual transmitter site was never changed.” *Id.* ¶16 (J.A. 64) (citing Petition at 7 (J.A. 38), 10 (J.A. 41), 15 (J.A. 46), 16 (J.A. 47), 17 (J.A. 48)). As such, the Bureau found that “[i]t is possible that [Chinese Voice] has engaged in misrepresentation and/or lack of candor.” *Ibid.* (J.A. 64). But in light of its action affirming “the cancellation of the Station’s license”—the sole FCC authorization held by Chinese Voice—the Bureau declined “at this time [to] pursue enforcement action” but “require[d] that [Chinese Voice] and its principals attach a copy of this decision to any FCC broadcast application that any of them file in the next five years so that a character assessment can be made in connection with any such application.” *Ibid.* (J.A. 64).

G. The Order on Appeal.

On February 14, 2020, Chinese Voice applied to the Commission to review the Bureau's *Reconsideration Decision*. Application for Review at 1 (J.A. 69). On November 25, 2020, the Commission released an order that dismissed in part and otherwise denied review. *Order on Appeal* ¶¶ 1, 18 (J.A. 203, 212).

At the outset, the Commission dismissed “as procedurally defective” Chinese Voice’s arguments that were not presented to the Bureau. *Order on Appeal* ¶ 12 & n.52 (J.A. 208). These were (1) that the facts of its case “differ significantly” from those presented in *Eagle*; (2) that “broadcasting from an unauthorized location is still ‘broadcasting,’ and [] that, in upholding the Commission’s interpretation, the court in *Eagle* misapplied *Chevron* deference”; and (3) “that it was ‘arbitrary and capricious’ for the Bureau to cancel the Station’s license when the Commission allows stations that have been ‘off the air for many more than twelve months, but not [] twelve consecutive months’ to retain their licenses.” *Ibid.* (J.A. 208).

“On alternative and independent grounds,” the Commission “reject[ed] these arguments and affirm[ed] the holding in the *Reconsideration Decision* that the Station’s license expired as a matter of law.” *Id.* ¶13 (J.A. 208).

As the Commission explained, the KQLS-LP license expired as a matter of law “because the station did not operate from an authorized facility from at least

January 2018 until May 2019, the time it was operating at the East Charleston Boulevard Site, regardless of its operations at the West Owens Avenue Site.” *Ibid.* (J.A. 208). The Commission was “unpersuaded by [Chinese Voice’s] argument that ‘the facts of the *Eagle* case are very different from the instant case,’” but found “[i]nstead, like this case, *Eagle* turned upon the fact that the station had failed to broadcast from an authorized site for more than 12 consecutive months.” *Ibid.* (J.A. 208).

The Commission also “reject[ed] [Chinese Voice’s] argument that broadcasting from an unauthorized location should qualify as ‘broadcasting’ for purposes of section 312(g).” *Ibid.* (J.A. 209). As the Commission explained, the Court “in *Eagle* fully analyzed the Commission’s construction of section 312(g) under both steps of *Chevron* and concluded it was eminently reasonable.” *Ibid.* (J.A. 209). But “whether or not *Chevron* applies,” the Commission explained, “[Chinese Voice] has made no persuasive argument for revisiting our long-standing interpretation.” *Ibid.* (J.A. 209). Rather, the Commission “reaffirm[ed]” that the transmission of unauthorized broadcast signals for a period of twelve consecutive months is insufficient to avoid automatic license expiration under section 312(g), and so “uph[e]ld the Bureau’s finding here that the Station’s license expired by operation of law.” *Id.* ¶14 (J.A. 209).

The Commission next “affirm[ed] the Bureau’s decision not to exercise its discretion under section 312(g) in this case to extend or reinstate [Chinese Voice’s] license to promote equity and fairness.” *Id.* ¶16 (internal quotation marks omitted) (J.A. 210). As the Commission explained, it “has exercised this discretion only in rare circumstances where a station was silent as a result of natural disasters or other compelling reasons beyond the licensee’s control.” *Ibid.* (J.A. 210). Here, “[Chinese Voice] did not allege that the Station’s construction at the wrong location was beyond its control,” but to the contrary, “admit[ed] that it deliberately moved the Station’s transmitter to the East Charleston Boulevard Site in order to be closer to Chinatown and operated the Station from that site for more than a year without Commission approval.” *Ibid.* (J.A. 210-11).

Finally, the Commission “affirm[ed] the Bureau’s finding that [Chinese Voice] may have engaged in misrepresentation and/or lack of candor.” *Id.* ¶17 (internal quotation marks omitted) (J.A. 211). The Commission explained that, despite certifying in its November 2017 license application that KQLS-LP was constructed and operating “at the Permit Site,” Chinese Voice “[i]n fact, . . . did not construct at and had never operated from the Permit Site.” *Ibid.* (J.A. 211). Instead, as Chinese Voice “revealed to [the Enforcement Bureau] almost two years later on August 8, 2019 and only after [the Enforcement Bureau] had initiated an investigation,” KQLS-LP “had operated from two different

unauthorized sites, one of which was located more than two miles from the Permit Site.” *Ibid.* (J.A. 211). Yet, on August 9, 2019, “[Chinese Voice] filed the License Modification Application, which indicated only that the geographic coordinates included in the License Application ‘were in error by 256 feet’ and did not mention that the Station had in fact operated from an unauthorized site over two miles away for a period of 15 months.” *Ibid.* (J.A. 211).

The Commission found that “these circumstances support the Bureau’s conclusion that [Chinese Voice] may have engaged in misrepresentation and/or lack of candor,” and also upheld the “Bureau’s decision not to pursue a misrepresentation investigation at this point.” And “[c]onsistent with the Bureau’s decision,” the Commission “require[d] [Chinese Voice] and its principals to include copies of the *Reconsideration Order* as well as this [*Order on Appeal*] with any Commission broadcast applications they file for the next five years.” *Ibid.* (J.A. 211). “Because [Chinese Voice] held no other Commission authorizations,” the Commission explained that “there was no immediate need to perform a character assessment,” and further explained that the “main point of the requirement is to ensure that any subsequently-filed applications are not routinely processed,” which will “ensure[] that the Commission has the opportunity to perform a character assessment” of Chinese Voice’s fitness to be a Commission licensee. *Ibid.* (J.A. 211). This appeal followed.

SUMMARY OF ARGUMENT

Section 312(g) of the Communications Act requires that holders of broadcast licenses use their licenses to provide service to the public as authorized by those licenses and specifies that such licenses automatically expire when the broadcast station fails to transmit broadcast signals as licensed for a period of twelve consecutive months. *See Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 552-553 (D.C. Cir. 2009).

It is undisputed that Chinese Voice failed to transmit any broadcast signals at its licensed site for more than twelve consecutive months. It is also undisputed that Chinese Voice—without Commission approval—constructed and operated KQLS-LP at two unlicensed locations, including intentionally doing so for fifteen months at a location more than two miles away from its licensed site. Under these undisputed facts, the Commission properly held that (1) Chinese Voice’s license expired by operation of law pursuant to section 312(g) of the Act, (2) reinstatement of the expired license would not promote equity and fairness, and (3) sufficient questions have been raised as to whether Chinese Voice engaged in misrepresentation and/or lack of candor so that it and its principals should be required to attach a copy of the Commission and Bureau orders in this case to any broadcast license applications they might file in the next five years.

ARGUMENT

I. STANDARD OF REVIEW

The *Order on Appeal* must be affirmed unless it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). This “deferential” standard of review “requires that agency action be reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). On appeal, “a court may not substitute its own policy judgment for that of the agency,” but instead “simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *Ibid.* (citation omitted).

II. THE COMMISSION PROPERLY DETERMINED THAT THE KQLS-LP LICENSE EXPIRED AS A MATTER OF LAW UNDER SECTION 312(G) OF THE ACT.

Section 312(g) of the Communications Act provides that “[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.” 47 U.S.C. § 312(g).

It has long been settled by the Commission and the Court that only the transmission of broadcast signals from an authorized location in accordance with the station’s license matters for purposes of Section 312(g). Thus, in *Eagle*, a radio station licensed to operate from a site in Parker, Arizona ceased operations at that

site and commenced operations – without authorization – from a different location. 563 F.3d at 548. The FCC determined that because the station had failed to broadcast from the site authorized in its license for more than a year, its license had expired as a matter of law under Section 312(g).

In a unanimous opinion, this Court affirmed. As the Court explained, “it strains credulity to suggest that the reference to ‘broadcast signals’ in § 312(g) includes unauthorized and unlicensed transmissions.” 563 F.3d at 552. And it would be “absurd,” the Court stated, to read the statute to “allow a station to avoid expiration by broadcasting from any site, even one that is thousands of miles removed from the authorized location.” *Ibid.* “Under the statute,” the Court stated, “unauthorized and unlicensed transmissions are no better than silence.” *Id.* at 553. “Thus, in assessing a licensee’s rights under § 312(g), the FCC reasonably concluded that an unauthorized transmission counts for nothing.” *Ibid.* *See also Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19, 20 (D.C. Cir. 2018) (“transmissions from [an] *unauthorized* location . . . do not constitute ‘broadcast signals’ for purposes of § 312(g)”; *A-O Broadcasting*, 23 FCC Rcd 603, 608 (2008) (rejecting the “contention that unauthorized transmissions prevent cancellation under Section 312(g)” as “inconsistent both with the purposes of Section 312(g) and with other provisions of the Act”).

Eagle is on all fours with this case and controls its result. The record amply shows, and Chinese Voice does not dispute, that KQLS-LP failed to transmit a broadcast signal from its licensed site for twelve consecutive months. *See* Brief for Petitioner (“Br.”) at 6 (quoting Tian Statement at ¶¶ 1, 3-5 (J.A. 10) (stating that station was originally constructed 256 feet away from its licensed site, and from January 2018 to May 2019 transmitted from a site “2.27 miles away” from that site). Thus, because KQLS-LP “did not operate from an authorized facility from at least January 2018 until May 2019”, *Order on Appeal* ¶13 (J.A. 208), a period of fifteen months, the Commission properly determined that the KQLS-LP license “expired as a matter of law, at 12:01 a.m. on December 13, 2018.” *Letter Decision* at 2 (J.A. 29).

Chinese Voice contends that the facts presented to this Court in *Eagle* were “very different” from the circumstances here. Br. at 24. The Commission properly found that argument barred because it had not been presented to the Bureau. *Order on Appeal* ¶12 n.52 (J.A. 208). Section 5(c)(5) of the Communications Act, 47 U.S.C. § 155(c)(5), provides that no application for review by the Commission shall rely “on questions of fact or law upon which” the component being reviewed “has been afforded no opportunity to pass.” *Accord* 47 C.F.R. § 1.115(c). *See BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003).

In any event, there is no material difference between the facts in *Eagle* and the facts presented here. In both cases, the licensee failed to transmit a broadcast signal from its authorized location for 12 consecutive months, and therefore the station's license expired by operation of law pursuant to section 312(g) for that reason. *See* 563 F.3d at 553 (“When Eagle failed to transmit from [its] place of license for more than a year, its license expired by operation of law”); *Order on Appeal* ¶13 (“like this case, *Eagle* turned on the fact that the station had failed to broadcast from an authorized site for more than 12 consecutive months”) (J.A. 208)⁵.

Chinese Voice also contends that *Eagle* was “wrong,” Br. at 30, “in error,” *id.* at 31, and “improperly decided,” *id.* at 32. But this Court's decisions control subsequent cases unless reheard en banc. *LaShawn A. v. Barry*, 87 F.3d 1389, 1395 (D.C. Cir. 1996) (en banc) (“One three-judge panel . . . does not have the authority to overrule another three-judge panel of the court”).

⁵ The Permit Site was short-spaced to two broadcast stations. Chinese Voice applied for and was granted a waiver of the minimum distance separation requirements at the Permit Site based on its “showing that there were no structures within the radius of the Station's 24-meter interference contour.” *Reconsideration Decision* ¶11 (J.A. 62). Any change in the station's transmitter location from the originally approved coordinates would have required prior Commission approval pursuant to 47 C.F.R. § 73.875(b)(2) based on a showing that KQLS-LP was no longer short-spaced to any station or a new waiver showing. *See supra* n.4.

Moreover, as the Commission properly found, Chinese Voice “has made no persuasive argument for revisiting” its “long-standing determination” (and that of this Court) that license expiration under section 312(g) cannot be avoided by broadcasting from a location not specified in the license. *Order on Appeal* at ¶13 (J.A. 209); *Eagle*, 563 F.3d at 553 (“unauthorized and unlicensed transmissions are no better than silence”). As the Commission explained, “if read to permit unauthorized operation to avoid license expiration, Section 312(g) would encourage violation of [the licensing requirements of] Section 301 and defeat its own purpose of ensuring timely construction and operation of authorized facilities that serve the public.” *Order on Appeal* ¶14 (J.A. 209). Indeed, as in *Eagle*, Chinese Voice’s reading of Section 312(g) would lead to an “absurd result” by “allow[ing] a station to avoid expiration by broadcasting from any site, even one that is thousands of miles removed from the authorized location.” 563 F.3d at 552.⁶

Chinese Voice contends that the Commission’s decision was arbitrary and capricious because in other cases involving low power FM stations and FM

⁶ Chinese Voice argues that this Court in *Eagle* “gave too much deference” to the Commission’s interpretation of Section 312(g). Br. at 27. Not so. “[I]f anything,” the Court stated, “the plain meaning of § 312(g)” supported the Commission’s view. 563 F.3d at 553. And even if the Commission’s interpretation was not compelled by the language and structure of the statute, the Court concluded that “the FCC’s construction of § 312(g) [was] eminently reasonable” and “easily passes muster.” *Ibid*.

translator stations, Commission staff only issued a “notice of violation” when antenna coordinate discrepancies were uncovered, and provided “opportunities to correct.” Br. at 35-36. In the first place, the Commission is not bound by the actions of its staff. *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008). Second, none of the cited staff decisions “indicate that the unauthorized operations had gone on for 12 consecutive months,” *Order on Appeal* ¶14 n.64 (J.A. 209-10), and thus have no application to Chinese Voice’s situation here.⁷

Lastly, Chinese Voice contends that the Commission erred in affirming the Bureau’s refusal to allow it to file a license modification application to correct its licensed coordinates under Section 73.1690(c)(11) of the Commission’s rules. Br. at 32-34. But as the Commission explained, Section 73.1690(c)(11) is not among the rules applicable to low power FM stations like KQLS-LP. *Order on Appeal* ¶15 n.65 (J.A. 210). In any event, it would have made no difference if Chinese Voice’s license modification application had been procedurally proper; the

⁷ Chinese Voice complains that other broadcast stations have “gamed the system” and not had their licenses cancelled even though they have been off the air for more than twelve months—although not consecutively. Br. at 36. But Section 312(g) does not cover that situation—it specifies that the failure to transmit must be for twelve “consecutive” months. 47 U.S.C. § 312(g). Moreover, as the Commission explained, the agency’s “approach to cases involving extended periods of silence that do not implicate section 312(g) has evolved,” and it has in some recent circumstances, issued orders “designating applications to renew station licenses for hearing to determine whether the licenses should be renewed in light of the stations’ failure to operate for most of their license terms.” *Order on Appeal* ¶13 & n. 61 (J.A. 209) (collecting citations).

application was filed on August 9, 2019 (*see* J.A. 20), long after the station's license had expired, pursuant to section 312(g), on December 13, 2018 for failure to transmit broadcast signals at its authorized site for twelve consecutive months.

Order on Appeal ¶15 n.65 (J.A. 210).

III. THE COMMISSION REASONABLY CONCLUDED THAT CONSIDERATIONS OF EQUITY AND FAIRNESS DID NOT WARRANT REINSTATEMENT OF THE KQLS-LP LICENSE.

The Commission also did not abuse its discretion in declining to reinstate the expired license. As the Commission explained, it has exercised its discretion to reinstate a license that has expired under section 312(g) “only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee’s control.” *Order on Appeal* ¶16 (internal quotation marks and citation omitted) (J.A. 210). *See, e.g., V.I. Stereo Commc’ns Corp.*, 21 FCC Rcd 14259 (2006) (silence due to destruction of towers in hurricane).

Here, the record shows – and Chinese Voice does not dispute – it applied for and was granted a permit to construct and operate KQLS-LP at a site with the antenna coordinates of “North Latitude: 36 deg 11 min 24 sec” and “West Longitude: 115 deg 08 min 35 sec” (J.A. 3)—a location it identified as “300 West Owens Avenue.” Tian Statement at ¶¶ 4, 6 (J.A. 10). Then, upon certifying to the Commission that it had in fact constructed KQLS-LP in accordance with the

permit, Chinese Voice applied for and was granted a license that authorized the transmission of broadcast signals at that site (J.A. 9).

KQLS-LP did not at any time transmit a broadcast signal from its licensed site, however. First, it constructed the station at a location “256 feet” away from its licensed site, at “120 West Owens Avenue.” *See* J.A. 21; Tian Statement at ¶6 (J.A. 10-11). Then, because of “very poor coverage in Chinatown,” the station’s “targeted community,” Chinese Voice moved the station’s transmitter to the rooftop of “1707 East Charleston Blvd, Las Vegas,” – 2.27 miles from its originally constructed location, “but closer to Chinatown.” Tian Statement at ¶8 (J.A. 11). Finally, Chinese Voice moved its transmission facilities back to its original (unlicensed) location. *Id.* at ¶10 (J.A. 11).

As the Commission noted, “[Chinese Voice] did not allege that the Station’s construction at the wrong location was beyond its control.” *Order on Appeal* ¶16 (J.A. 210). To the contrary, the Commission found, Chinese Voice “deliberately moved the Station’s transmitter to the East Charleston Boulevard Site in order to be closer to Chinatown and operated the Station from that site for more than a year without Commission approval.” *Ibid.* (J.A. 211). *See also id.* n.71 (noting *Reconsideration Decision*’s conclusion that there is “no question about the licensee’s decision to operate from an unauthorized location to improve the Station’s coverage”) (J.A. 211).

The Commission reasonably determined that to extend or reinstate the KQLS-LP license in the face of Chinese Voice's deliberate decision to move the station's transmission antenna to an unlicensed and unauthorized location in violation of the terms of its license and section 301 of the Act would not promote "equity or fairness" within the meaning of section 312(g). The agency therefore properly declined to reinstate KQLS-LP's license.

Chinese Voice does not contest the Commission's finding that its decision to transmit from unlicensed locations was deliberate. Instead, it argues that the Commission's decision to exercise its discretion to reinstate on grounds of equity and fairness only in compelling circumstances that are beyond the licensee's control is too narrow. Br. at 44.

The Commission properly found this contention barred because it had not been presented to the Bureau. *Order on Appeal* ¶16 n.69 (J.A. 210) (citing 47 U.S.C. § 155(c)(5) and 47 C.F.R. § 1.115(c)). Chinese Voice contends that the Commission's determination was incorrect because the argument had been presented to the Bureau in its petition for reconsideration. Br. 43-44 (citing J.A. 46-48). While Chinese Voice's reconsideration petition generally argued that it had "conducted itself in good faith," (J.A. 47), nowhere in that petition did Chinese Voice take issue with the Commission's standard for exercising its discretion to extend or reinstate its license.

In any event, the Commission reasonably explained why it was adhering to its settled standard. As it stated, the standard appropriately takes account of the fact that the statutory “language granting the Commission discretion to extend or reinstate station licenses is ‘phrased as an exception to the general rule that most affected licenses will be forfeited.’” *Order on Appeal* ¶16 n.69 (J.A. 210) (quoting *A-O Broadcasting Corp.*, 23 FCC Rcd at 617 ¶26). The Commission thus appropriately adhered to its position that it should exercise its statutory discretion “only in rare circumstances.” *Ibid.* (quoting *Christian Bros. of East Point, Inc.*, 30 FCC Rcd 13975 ¶4 (2015)) (J.A. 210).

Finally, Chinese Voice argues that the Commission should have considered whether the public interest benefits of KQLS-LP’s Chinese language programming supported extension or reinstatement of its license. Br. at 45-46. In the first place, Chinese Voice mentioned this ground for reinstatement in a single sentence in its 25-page application for review (*see* J.A. 92). Having thus deprived the Commission of a “fair opportunity” to address it, Chinese Voice cannot raise that argument in this Court. *GLH Commc’ns, Inc. v. FCC*, 930 F.3d 449, 455 (D.C. Cir. 2019). *See* 47 U.S.C. § 405(a).

In any event, Chinese Voice’s argument is simply a variant on its contention that the Commission should have broadened its standard for reinstatement under section 312(g), which the Commission reasonably rejected. *Order on Appeal* ¶16

n.69 (J.A. 210). The nature of a station’s programming has nothing to do with whether its failure to broadcast from its authorized site is excusable. Moreover, there is nothing in the Commission’s rules that would have prevented KQLS-LP from changing its format at any time. By the same token, there is no obstacle that would prevent another Las Vegas area licensee—one more faithful to the Communications Act and the Commission’s rules—from providing programming tailored to the Chinese-speaking community.

IV. THE COMMISSION REASONABLY REQUIRED CHINESE VOICE TO INCLUDE COPIES OF THE *RECONSIDERATION DECISION* AND THE *ORDER ON APPEAL* IN ANY APPLICATIONS IT FILES IN THE NEXT FIVE YEARS.

Lastly, the Commission reasonably determined that Chinese Voice “may have engaged in misrepresentation and/or lack of candor” to the agency. *Order on Appeal* ¶17 (J.A. 211). Not only had Chinese Voice wrongly certified in its license application that it had constructed the station “as authorized in the underlying construction permit” (J.A. 6), but its subsequent license modification application simply stated that its station was erroneously located “256 feet” away from its authorized site (J.A. 21). In fact, as disclosed in the August 8, 2019 statement by Mr. Tian to the Enforcement Bureau (the day before the license modification application was filed), Chinese Voice had moved its transmission facilities in January 2018 to the rooftop of a building “2.27 miles” away. Tian Statement at ¶8 (J.A. 11).

As the Commission found, the stark discrepancies between the characterizations of KQLS-LP's operations in the Tian Statement as opposed to those in its license modification application and the petition for reconsideration "support the Bureau's conclusion that [Chinese Voice] may have engaged in misrepresentation and/or lack of candor." *Order on Appeal* ¶17 (J.A. 211). But because the Bureau had cancelled KQLS-LP's license and dismissed its license modification request and request for special temporary authority, and "[Chinese Voice] held no other Commission authorizations," the Commission agreed that there "was no immediate need to perform a character assessment" to determine whether Chinese Voice was qualified to hold FCC licenses "at that time." *Ibid.* (J.A. 211).⁸

Instead, the Commission required Chinese Voice and its principals to include copies of the *Reconsideration Decision* and the *Order on Appeal* "with any Commission broadcast applications they file for the next five years." *Ibid.* (J.A. 211). "The main point of the requirement," the Commission explained, "is to ensure that any subsequently-filed applications are not routinely processed," and to

⁸ Section 308(b) of the Communications Act, 47 U.S.C. § 308(b), empowers the Commission to inquire into a license applicant's "character" to operate a broadcast station. Under the Commission's *Character Policy Statement*, the character inquiry "focus[es] on the likelihood that an applicant will deal truthfully with the Commission and comply with the Communications Act and [FCC] rules and policies." 102 F.C.C.2d 1179, 1183 ¶7 (1986) (subsequent history omitted).

make sure that the Commission has an opportunity to “perform a character assessment” in the future. *Ibid.* (J.A. 211).

Chinese Voice contends that it “engaged in no misrepresentation or lack of candor.” Br. at 39. But the Commission did not determine that it had. It simply affirmed the Bureau’s determination that, under the circumstances, Chinese Voice “may have” done so, and established a requirement that would allow it to perform an assessment of Chinese Voice’s character to hold a broadcast license at the time any “subsequently-filed applications” are submitted. *Order on Appeal* ¶17 (J.A. 211). Chinese Voice will have the opportunity it seeks, at that time, “to provide additional evidence to show that it had not engaged in misrepresentation or lack of candor.” Br. at 42.

CONCLUSION

The *Order on Appeal* should be affirmed.

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I, Pamela L. Smith, hereby certify that on June 11, 2021, I filed the foregoing Brief for Appellee with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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STATUTORY APPENDIX

Communications Act Provisions:

47 U.S.C. § 153(7)

47 U.S.C. § 155(c)(5)

47 U.S.C. § 301

47 U.S.C. § 312(g)

FCC Rules:

47 C.F.R. § 1.115(c)

47 C.F.R. § 73.801

47 C.F.R. § 73.807(a)(1)

47 C.F.R. § 73.850(b)

47 C.F.R. § 73.854

47 C.F.R. § 73.873(b)

47 C.F.R. § 73.875(b)(2)

47 C.F.R. § 73.1690(c)(11)

47 C.F.R. § 73.1745(a)

47 C.F.R. § 73.1750

47 U.S.C.

§ 153. Definitions

For the purposes of this chapter, unless the context otherwise requires--

(7) Broadcasting

The term “broadcasting” means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

§ 155. Commission

(c)(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass.

§ 301. License for radio communication or transmission of energy

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States (except as provided in section 303(t) of this title); or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

§ 312. Administrative sanctions

(g) Limitation on silent station authorizations

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.

47 C.F.R.

§ 1.115. Application for review of action taken pursuant to delegated authority.

(c) No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.

Note: Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.

§ 73.801 Broadcast regulations applicable to LPFM stations.

The following rules are applicable to LPFM stations:

Section 73.201 Numerical definition of FM broadcast channels.

Section 73.220 Restrictions on use of channels.

Section 73.267 Determining operating power.

Section 73.277 Permissible transmissions.

Section 73.297 FM stereophonic sound broadcasting.

Section 73.310 FM technical definitions.

Section 73.312 Topographic data.

Section 73.318 FM blanketing interference.

Section 73.322 FM stereophonic sound transmission standards.

Section 73.333 Engineering charts.

Section 73.503 Licensing requirements and service.

Section 73.508 Standards of good engineering practice.

Section 73.593 Subsidiary communications services.

Section 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

Section 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

Section 73.1201 Station identification.

Section 73.1206 Broadcast of telephone conversations.

Section 73.1207 Rebroadcasts.

Section 73.1208 Broadcast of taped, filmed, or recorded material.

Section 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

Section 73.1211 Broadcast of lottery information.

Section 73.1212 Sponsorship identification; list retention; related requirements.

Section 73.1213 Antenna structure, marking and lighting.

Section 73.1216 Licensee-conducted contests.

Section 73.1217 Broadcast hoaxes.

Section 73.1250 Broadcasting emergency information.

Section 73.1300 Unattended station operation.

Section 73.1400 Transmission system monitoring and control.

Section 73.1520 Operation for tests and maintenance.

Section 73.1540 Carrier frequency measurements.

Section 73.1545 Carrier frequency departure tolerances.

Section 73.1570 Modulation levels: AM, FM, and TV aural.

Section 73.1580 Transmission system inspections.

Section 73.1610 Equipment tests.

Section 73.1620 Program tests.

Section 73.1650 International agreements.

Section 73.1660 Acceptability of broadcast transmitters.

Section 73.1665 Main transmitters.

Section 73.1692 Broadcast station construction near or installation on an AM broadcast tower.

Section 73.1745 Unauthorized operation.

Section 73.1750 Discontinuance of operation.

Section 73.1920 Personal attacks.

Section 73.1940 Legally qualified candidates for public office.

Section 73.1941 Equal opportunities.

Section 73.1943 Political file.

Section 73.1944 Reasonable access.

Section 73.3511 Applications required.

Section 73.3512 Where to file; number of copies.

Section 73.3513 Signing of applications.

Section 73.3514 Content of applications.

Section 73.3516 Specification of facilities.

Section 73.3517 Contingent applications.

Section 73.3518 Inconsistent or conflicting applications.

Section 73.3519 Repetitious applications.

Section 73.3520 Multiple applications.

Section 73.3525 Agreements for removing application conflicts.

Section 73.3539 Application for renewal of license.

Section 73.3542 Application for emergency authorization.

Section 73.3545 Application for permit to deliver programs to foreign stations.

Section 73.3550 Requests for new or modified call sign assignments.

Section 73.3561 Staff consideration of applications requiring Commission consideration.

Section 73.3562 Staff consideration of applications not requiring action by the Commission.

Section 73.3566 Defective applications.

Section 73.3568 Dismissal of applications.

Section 73.3580 Local public notice of filing of broadcast applications.

Section 73.3584 Procedure for filing petitions to deny.

Section 73.3587 Procedure for filing informal objections.

Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

Section 73.3589 Threats to file petitions to deny or informal objections.

Section 73.3591 Grants without hearing.

Section 73.3593 Designation for hearing.

Section 73.3598 Period of construction.

Section 73.3599 Forfeiture of construction permit.

Section 73.3999 Enforcement of 18 U.S.C. 1464—restrictions on the transmission of obscene and indecent material.

§ 73.807 Minimum distance separation between stations.

(a)(1) An LPFM station will not be authorized initially unless the minimum distance separations in the following table are met with respect to authorized FM stations, applications for new and existing FM stations filed prior to the release of the public notice announcing an LPFM window period, authorized LPFM stations, LPFM station applications that were timely-filed within a previous window, and vacant FM allotments. LPFM modification applications must either meet the distance separations in the following table or, if short-spaced, not lessen the spacing to subsequently authorized stations. [NOTE: The table contained in the rule here has been omitted.]

§ 73.850 Operating schedule.

(b) All LPFM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

§ 73.854 Unlicensed radio operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner, including individually or with persons, groups, organizations, or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301. If an application is dismissed pursuant to this section, the applicant is precluded from seeking nunc pro tunc reinstatement of the application and/or changing its directors to resolve the basic qualification issues.

§ 73.873 LPFM license period.

(b) The license of an LPFM station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

§ 73.875 Modification of transmission systems.

The following procedures and restrictions apply to licensee modifications of authorized broadcast transmission system facilities.

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 318.

(2) Any change in station geographic coordinates, including coordinate corrections and any move of the antenna to another tower structure located at the same coordinates.

§ 73.1690 Modification of transmission systems.

The following procedures and restrictions apply to licensee modifications of authorized broadcast transmission system facilities.

(c) The following FM, TV and Class A TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. With the exception of applications filed solely pursuant to paragraphs (c)(6), (c)(9), or (c)(10) of this section, the modification of license application must contain an exhibit demonstrating compliance with the Commission's radio frequency radiation guidelines. In addition, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002, an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, is also required.

(11) Correction of geographic coordinates where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude, provided there is no physical change in location and no other licensed parameters are changed. The correction of coordinates may not result in any new short spacings or increases in existing short spacings.

§ 73.1745 Unauthorized operation.

(a) No broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.

§ 73.1750 Discontinuance of operation.

The licensee of each station shall notify by letter the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, for cancellation. The license of any station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. If a licensee surrenders its license pursuant to an interference reduction agreement, and its surrender is contingent on the grant of another application, the licensee must identify in its notification the contingencies involved.